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7 SALES, INC., BANANA REPUBLIC, LLC, AND OLD NAVY,  
LLC

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 ROOTS READY MADE GARMENTS CO.  
13 W.L.L.,

14 Plaintiff,

15 v.

16 THE GAP, INC., a/k/a, GAP, INC., GAP  
INTERNATIONAL SALES, INC., BANANA  
17 REPUBLIC, LLC, AND OLD NAVY, LLC

18 Defendants.  
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Case No. C 07-03363 CRB

**NOTICE OF MOTION AND MOTION  
FOR PROTECTIVE ORDER**

Date: July 18, 2008  
Time: 10:00 a.m.  
Dept.: Courtroom 8, 19th Floor  
Judge: Hon. Charles R. Breyer

**NOTICE OF MOTION AND STATEMENT OF RELIEF SOUGHT**

**PLEASE TAKE NOTICE**, that on July 18, 2008, at 10:00 a.m., before the Honorable Charles R. Breyer, United States District Court, San Francisco, California, Defendants Gap International Sales, Inc., The Gap, Inc., Banana Republic, LLC, and Old Navy, LLC (collectively “Gap”), will, and hereby do move for a protective order pursuant to Fed. R. Civ. P. 26(c) seeking to bar Plaintiff Roots Ready Made Garments Co., WLL (“Roots”) from taking the deposition of Donald Fisher, Gap’s founder and former CEO and Chairman. The motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed concurrently herewith, the Declaration of Rose Darling filed concurrently herewith, the [Proposed] Order lodged concurrently herewith, all other papers on file in this action, and the oral argument of counsel at the hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Roots recently noticed the deposition of Gap’s founder and former CEO and Chairman of the Board, Donald Fisher. Despite the fact that Mr. Fisher is completely removed from the central facts and allegations in this case, Roots insists on deposing him based on a brief exchange of pleasantries with one of Roots’ principals, Ashraf Abu Issa. Mr. Fisher has no other knowledge relating to this case: at most, he could confirm that he met with Mr. Abu Issa. To resolve this matter, and to eliminate any conceivable reason for taking Mr. Fisher’s deposition, Gap will agree not to contest Roots’ version of the alleged conversation. In these circumstances, there is no conceivable justification for deposing a high-level executive such as Mr. Fisher. For these reasons, as set forth in further detail below, the Court should enter a protective order barring Roots from taking Mr. Fisher’s deposition.

**II. BACKGROUND**

On May 21, 2008, Roots served Gap with a notice of deposition for Donald Fisher. *See* Declaration of Rose Darling in Support of Defendants’ Motion for Protective Order, filed

herewith, (“Darling Decl.”) ¶ 2, Ex. A. Donald Fisher, age 79, is the founder of Gap, Inc. *See id.* ¶ 3, Ex. B. He served as Gap’s Chief Executive Officer from 1969 to 1995, and Chairman of the Board from 1969 to 2004. *Id.* Currently, Mr. Fisher is Chairman Emeritus and a director of Gap, Inc. *Id.*

On May 23, 2008, Gap sent a letter to Roots’ counsel requesting that Roots withdraw its notice. *Id.* ¶ 4, Ex. C. In that letter, Gap told Roots that Mr. Fisher has no relevant knowledge of Gap’s business dealings with Roots. *See id.* In a follow-up meet-and-confer letter Roots’ counsel told Gap that it wished to depose Mr. Fisher based on a brief conversation that took place when Roots’ CEO Ashraf Abu Issa was introduced to Mr. Fisher. *Id.* ¶ 5, Ex. D. Specifically, Mr. Abu Issa testified during his deposition that Mr. Fisher said that he “thought it was very interesting and he was impressed with the results of the . . . ISP program.” *Id.* Ex. E at 174:21-175:7. Mr. Abu Issa further testified that Mr. Fisher said that he was “very happy to meet a true retailer” and was “certain that [Gap and Roots] will have a bright future together, a good future together.” *Id.* at 175:8-10. Mr. Fisher also allegedly suggested that Mr. Abu Issa should meet with Gap’s international sales manager. *Id.* at 175:11-22. Roots argues that Mr. Fisher’s brief exchange with Mr. Abu Issa is relevant to “Roots’ ISP operations in Qatar and the UAE, and the future business relationship between Roots and Gap.” *See id.* ¶ 5, Ex. D.

Despite the fact that Mr. Fisher has no relevant personal knowledge about Roots’ business with Gap or the facts at issue in this case, Roots refused to withdraw Mr. Fisher’s deposition notice. *Id.* ¶ 6. Gap was thus forced to bring this motion for protective order. *Id.* The parties agreed on a shortened briefing schedule for this motion. *Id.*

### III. ARGUMENT

The Federal Rules allow the Court to limit discovery in order to avoid harassment. *See* Fed. R. Civ. P. 26(b)(1). Because of the potential for abuse, courts do not freely permit parties to take the depositions of senior corporate executives. As a court in this district recently explained,

1 “[v]irtually every court that has addressed deposition notices directed at an official at the highest  
2 level or ‘apex’ of corporate management has observed that such discovery creates a tremendous  
3 potential for abuse or harassment.” *Celerity, Inc. v. Ultra Clean Holding, Inc.*, No. C 05-4374  
4 MMC (JL), 2007 WL 205067, at \*3 (N.D. Cal. Jan. 25, 2007). Accordingly, before a party may  
5 depose a senior corporate executive, the party must demonstrate that the executive has “unique  
6 personal knowledge of the facts at issue.” *Id.* (emphasis added); *Baine v. General Motors Corp.*,  
7 141 F.R.D. 332, 335 (M.D. Ala. 1991) (denying deposition of General Motors’ vice president  
8 because plaintiff had not shown that the vice president had “any superior or unique personal  
9 knowledge” relevant to issues in the case); *Community Federal Sav. & Loan Ass’n v. FHLBB*, 96  
10 F.R.D. 619, 621-22 (D.D.C. 1983) (prohibiting depositions of high-level administrators where  
11 party seeking depositions failed to show that the would-be deponents had “unique personal  
12 knowledge” of the facts in the litigation).

14       Roots has not shown that Mr. Fisher is in possession of any such unique knowledge. To  
15 the contrary, the only justification proffered by Roots for deposing Gap’s founder and former  
16 CEO and Chairman is a brief “meet and greet” he had with Mr. Abu Issa. Roots has no other  
17 basis for seeking to take Mr. Fisher’s deposition; there is no allegation that Mr. Fisher was  
18 present at any other meeting, involved in Gap’s dealings with Roots in any other way, or has any  
19 other knowledge germane to this dispute. Roots has no reason to depose Mr. Fisher other than to  
20 seek his confirmation of Roots’ version of the alleged conversation.

22       Even if an exchange of pleasantries between two senior executives could be relevant to  
23 some issue in the case—and it’s not—Gap has agreed to eliminate any possible basis for taking  
24 Mr. Fisher’s deposition by agreeing not to dispute Mr. Abu Issa’s version of the meeting. In this  
25 circumstance, Mr. Fisher’s testimony can add nothing to the evidence. Roots has not made any  
26 showing warranting his deposition, let alone the showing that would be required to take the  
27 deposition of an executive as senior—and as removed from the day-to-day operations of the  
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1 company—as Mr. Fisher.

2 **IV. CONCLUSION**

3 For the foregoing reasons, Gap respectfully requests that the Court grant its Motion for a  
4 Protective Order barring Roots from taking the deposition of Gap’s founder and former CEO and  
5 Chairman Donald Fisher.

6 Dated: June 30, 2008

KEKER & VAN NEST, LLP

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9 By: /s/ Rose Darling  
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11 Attorneys for Defendants  
12 GAP INTERNATIONAL SALES, INC.,  
13 THE GAP, INC., BANANA REPUBLIC,  
14 LLC, and OLD NAVY, LLC  
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